

Barry I. Slotnick (BS-6234)  
Paula K. Colbath (PC-9895)  
Douglas E. Mirell (CA SBN 094169), appearing *pro hac vice*  
LOEB & LOEB LLP  
345 Park Avenue  
New York, New York 10154  
(212) 407-4000

Attorneys For Defendant  
Marilyn Monroe LLC

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X

SHAW FAMILY ARCHIVES, LTD. EDITH  
MARCUS and META STEVENS,

Plaintiffs,

-against-

CMG WORLDWIDE, INC., an Indiana  
Corporation, and MARILYN MONROE, LLC,  
a Delaware Limited Liability Company,

Defendants.

-----X

X

:

:

05 Civ. 3939 (CM)

:

**DECLARATION OF DOUGLAS E.**

**MIRELL IN OPPOSITION TO**

**PLAINTIFFS' MOTION FOR ORDER**

**THAT SB 771 IS UNCONSTITUTIONAL**

**AND THAT THE COURT'S MAY 2, 2007**

**DECISION AND ORDER STANDS**

:

:

I, Douglas E. Mirell, declare:

1. I am an attorney at law, duly licensed and entitled to practice before the courts of the State of California. I have been admitted *pro hac vice* to appear before this Court for purposes of the above-captioned action. I am a partner with the law firm of Loeb & Loeb LLP, counsel of record for defendant Marilyn Monroe LLC. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would testify competently thereto.

2. Attached as **Exhibit "A"** is a true and correct copy of a letter dated September 17, 1984, from the Legislative Counsel of California to then-Governor George Deukmejian.

3. Attached hereto as **Exhibit "B"** is a true and correct copy of Senate Bill 771 (SB 771) as amended by its author, California Senator Sheila J. Kuehl, on June 28, 2007, to clarify California Civil Code Section 3344.1.

4. Attached hereto as **Exhibit "C"** is a true and correct copy of SB 771 as passed by the California Assembly on September 4, 2007, and passed by the California Senate on September 7, 2007, as well as true and correct copies of the unofficial ballots for the SB 771 vote in both the California Assembly and the California Senate.

5. Attached as **Exhibit "D"** is a true and correct copy of SB 771 (2007 Cal. Stat. ch. 439), as signed by Governor Arnold Schwarzenegger on October 10, 2007, effective January 1, 2008.

6. Attached as **Exhibit "E"** is a true and correct copy of the Senate Judiciary Committee's Analysis prepared for its September 6, 2007, hearing on SB 771.

7. Attached as **Exhibit “F”** is a true and correct copy of the Analysis prepared by the Office of Senate Floor Analyses, Senate Rules Committee, for the September 7, 2007, Senate floor vote on SB 771.

8. Attached as **Exhibit “G”** is a true and correct copy of a letter dated July 23, 2007, from retired California State Senator Bill Campbell to State Senator Kuehl.

9. Attached as **Exhibit “H”** is a true and correct copy of an “Order Granting Defendants’ Motion For Summary Judgment.” This Order was entered by United States District Judge Margaret Morrow in the Central District of California in *Milton Greene Archives, Inc. v. CMG Worldwide, Inc, et al.*, USDC Case No. CV 05-2200 (the “California Action”) on May 14, 2007.

10. Based on Section 3344.1, as clarified by SB 771, Marilyn Monroe LLC filed a motion for reconsideration of Judge Morrow’s Order Granting Defendants’ Motion For Summary Judgment in the California Action. Attached as **Exhibit “I”** is a true and correct copy of Judge Morrow’s “Order Granting Plaintiff’s Motion for Reconsideration,” entered in the California Action on January 7, 2008.

11. Attached as **Exhibit “J”** is a true and correct copy of an “Order Denying Defendant’s Motion for Certification of Order For Immediate Appeal Pursuant to 28 U.S.C. § 1292(B) And A Stay Of The Case” This Order was entered by Judge Morrow in the California Action on January 22, 2008.

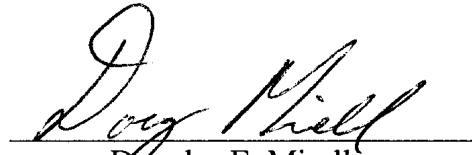
12. Attached as **Exhibit “K”** is a true and correct copy of an Order entered on February 21, 2008, by the Ninth Circuit Court of Appeals, denying a writ of mandamus challenging the finding of SB 771’s constitutionality in the California Action.

13. Attached as **Exhibit "L"** is a true and correct copy of a letter dated September 13, 2007, from the Legislative Counsel of California to Governor Arnold Schwarzenegger.

14. Attached collectively as **Exhibit "M"** are true and correct copies of pages 6-8 from a book entitled "The Complete Marilyn Monroe," authored by Adam Victor (London: Thames & Hudson, 1999), containing copies of three 1950s-era advertisements for a variety of products that embody Marilyn Monroe's name and likeness, thus reflecting Ms. Monroe's commercial exploitation of her own persona during her lifetime.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of March, 2008, at Los Angeles, California.

  
Douglas E. Mirell